

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

CASH DEPOT, LTD.
d/b/a 1ST ISO PROCESSING

Case No.: 15-CV-_____

Plaintiff,

-vs-

FIRST AMERICAN PAYMENT SYSTEMS, L.P.

Defendant.

DECLARATION OF DAVID R. CHARLES

David R. Charles, under penalty of perjury, declares as follows:

1. I serve as President of Cash Depot Ltd. d/b/a 1st ISO Processing (“1st ISO”), the Plaintiff in the above-captioned matter. I make this Declaration of my own personal knowledge and based upon records made at or near the time of the events in question by persons with knowledge, kept in the regular course of 1st ISO’s activity, which it is 1st ISO’s regular practice to keep.

2. Concord Processing, LP (“Concord”) and First American Payment Systems, L.P. (“First American”) entered into a Concord Processing Agreement effective March 1, 2003, Amended August 1, 2007 and January 1, 2011 (hereinafter the “Agreement”). A true and correct copy of the Agreement is attached hereto as Exhibit A.

3. On July 1, 2014, Cash Depot Ltd. d/b/a 1st ISO Processing (“1st ISO”) assumed the rights and responsibilities of Concord Processing, LP under the Agreement and other such agreements.

4. For several months thereafter, 1st ISO provided processing services to First American and collected a gross of \$585,028.52 on First American's behalf. 1st ISO withheld \$21,266.58 of that amount as its fees under the Agreement and paid the balance of \$564,761.18 to First American. 1st ISO did not charge First American the Monthly Minimum Fee required by the Agreement. True and correct copies of monthly statements from August 1, 2014 to April 1, 2015 are attached hereto as Exhibit B.

5. On May 29, 2015, First American sent 1st ISO a Notice of Cancellation of Processing Under ATM Agreement dated March 1, 2003, Amended August 1, 2007 and January 1, 2011 (the "Notice of Cancellation"). A true and correct copy of the Notice of Cancellation is attached hereto as Exhibit C.

6. Notwithstanding the terms of the 2011 Addendum, First American did not include the Early Termination Fee with its Notice of Cancellation.

7. Upon receiving the Notice of Cancellation, 1st ISO reviewed the Agreement and discovered that it had not charged First American the Monthly Minimum Fee.

8. On June 8, 2015, 1st ISO sent First American an invoice for \$258,787.93, representing the difference between the Monthly Minimum Fee for the period July 2014-May 2015 and the amount actually withheld as fees during that same period. A true and correct copy of the invoice is attached hereto as Exhibit D.

9. 1st ISO also notified First American that First American owed an Early Termination Fee of \$120,000.00, calculated per the 2011 Addendum based on a Monthly Minimum Fee of \$25,000.00 per month (i.e. \$25,000.00 x. 6 months remaining in initial term x 80% = \$120,000.00). A true and correct copy of the letter notification, without enclosures, is attached hereto as Exhibit E.

10. Given that the 2011 Addendum requires a minimum of 30 days' notice for cancellation of the Agreement, 1st ISO construed First American's June 8, 2015 Notice of Cancellation to be effective as of the end of June 2015. 1st ISO therefore invoiced First American \$25,250.00 for the month of June 2015, representing the Monthly Minimum Fee and additional fees for that month. A true and correct copy of the invoice is attached hereto as Exhibit F.

11. The amount invoiced to First American by 1st ISO totals \$404,037.93.

12. First American has failed to pay any of that amount, despite demand.

I declare under penalty of perjury that the foregoing statements are true and correct.

Dated this 19th day of August, 2015.

s/David R. Charles

David R. Charles

(771509.017-#2113533)